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ABSTRACT

This paper explores how the education system of the 21st century has reached its current state and discusses where it needs to go, noting that the depth and quality of the education system reflects the wellness of the society. The goal that schools, districts, parents, and governments are attempting to achieve is one of equity for all students. If equity in education is limited, this limits the potential forward progress of each individual and of society. The paper examines the history of federal law related to educational equality and opportunity since the Civil War. It also looks at legislation passed by Texas courts and how it was influenced by federal legislation regarding the funding of education. The paper concludes that to truly provide an equitable system of education, three areas must be made as equitable as possible: funding, curriculum alignment with assessment instruments, and teacher commitment to providing each child with an equitable education. (Contains 12 references.) (SM)

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EQUITY FOR THE 21ST CENTURY

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Equity for the 21st Century

The 21st century has finally arrived! We have reached this milestone with our eyes and hearts set toward the future. Yet we can not forget our history which has brought us to this point. We have made great gains in many areas including technology, communication and education.

The depth and quality of the education system reflects the wellness of our society. The educational system is and always will be the cornerstone of who we are and who we will become. This paper will explore how we got where we are as an educational system and where we need to go.

The goal schools, districts, parents and governments are attempting to achieve is one of equity or fairness to all students. We as a society must strive for equity in education so all children are given a fair opportunity to experience the educational process to its full extent. We cannot afford to deprive this opportunity to any child based on color, race, or economic surroundings. We do not have the privilege nor the right to determine who will be the leaders of tomorrow. If we limit ourselves in this area of equity in education, we limit the potential forward progress of each individual and of our society.

The educational system of the state of Texas is similar to many other states having had its method of funding examined by the courts. The court is the only branch of government capable of deciding if the funding of education within a state is constitutional in nature. Our system of government is setup with checks and balances in place to watch

over the various branches of our government. Many believe this to be one more area where the government has invaded our lives.

Federal Law

After the Civil War, the South enacted the Black Codes to prevent former slaves emerging out of the pit of slavery. Blacks were not treated fairly and to prevent states form enforcing these codes the nation passed the Fourteenth Amendment of the Constitution. This amendment prevented states from denying "to any person within its jurisdiction the equal protection of the laws."(Fourteenth Amendment, US Constitution)

The Supreme Court began to try to define the equal protection clause of the Fourteenth Amendment. In Strauder v. West Virginia (1879), the Court set aside the murder conviction of a black man, because the state only permitted "white males who are twenty-one years of age and who are citizens of this State" to sit on the jury. It was ruled the state had denied the man equal protection of the laws because he had "to submit to a trial for his life by a jury drawn from a panel from which the State had expressly excluded every man of his race." The Court added, "The very fact that colored people are singled out and expressly denied by a statue all right to participate in the administration of the law as jurors, because of their color, though they are citizens, and may be in other respects fully qualified, is practically a brand upon them, affixed by the law, an assertion of their inferiority, and a stimulant to that race prejudice which is an impediment to securing to individuals of the race that equal justice which the law aims to secure to all others." The court interpreted the 14th Amendment as proscribing all state-imposed discriminations against blacks. Strauder v. West Virginia (1880).

This case set the stage for Federal cases that are important to educational equity. One significant yet forgotten case was Plessy v. Ferguson (1896). On June 7, 1892, a 30 year-old black man got on an East Louisiana Railway passenger train. He took a seat in the "white" railcar. The conductor ordered him to leave the car and go have a seat in the "colored" railcar. Plessy refused to do this. He was removed by force and jailed.

Plessy argued the Louisiana statute violated the Fourteenth Amendment to the Constitution by not treating him equally under the law. The state courts ruled on the side of the railcar statute, so Plessy asked the United States Supreme Court to hear his case. The Supreme Court upheld the lower courts ruling. The majority opinion, written by Justice Brown, explained the Fourteenth Amendment was only "to enforce the absolute equality of the two races before the law, " and not to enforce social equality. Also, "laws permitting, and even requiring, their separation, in establishment of separate white and colored schools, do not necessarily imply the inferiority of either race to the other, and have been generally, if not universally, recognized as within the competency of the state legislatures." (Plessy v. Ferguson) 1896. The majority opinion never used the term "separate but equal"; it did create a legally enforced segregation as long as black facilities were not inferior to those of whites. This created an era whereupon the education of our children was based on privileges not rights.

In 1954, the landmark case of Brown v. Board of Education was heard by the United States Supreme Court. In this case, the Court held that the separate but equal public schooling allowed under Plessy v. Ferguson did violate the equal clause of the Fourteenth Amendment, therefore making "separate but equal" unconstitutional in public schools. Chief Justice Earl Warren writes in his opinion "We conclude that in the field of

public education the doctrine of "separate but equal" has no place. Separate educational facilities are inherently unequal… To separate them from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone." (Brown v. Board of Education 1954)

The Brown case has far reaching influence in education. It ended the practice of education being for the privileged and made it a right guarenteed by the constitution. "It is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms." (Brown v. Board of Education 1954).

This case set the stage for the passage of the Civil Rights Act of 1964 and the Elementary and Secondary Education Act of 1965. Increasingly more forms of segregation in schooling were considered unacceptable. In 1985, Oakes called for schools to stop academic tracking because it is so closely tied to race and class-based segregation.

A note to the reader, within the opinion of Brown v. Board of Education the Court gives mention to six cases involving the "separate but equal" doctrine in the field of public education. These cases were Cumming v. County Board of Education, Gong Lum v. Rice, Missouri ex rel. Gaines v. Canada, Sipuel b. Oklahoma, Sweatt b. Painter, and Mclaurin v. Oklahoma State Regents. None of these cases made it necessary to re-examine the "separate but equal" doctrine to grant relief to the Negro plaintiff. (Brown v. Board of Education 1954)

In 1973 the Supreme Court ruled on a case which had major ramifications in the education community. In San Antonio School District v. Rodriguez (1973), the Court ruled if the system of funding schools in Texas was a violation of the Fourteenth Amendment. Parents of Mexican-American children, who attend the Edgewood Independent School District, an urban school district in San Antonio Texas brought a class action suit against the state. These was done on behalf of schoolchildren who are members of minority group or who are poor and reside in school districts having a low property tax base. (San Antonio Independent School District v. Rodriquez 1973)

The Court ruled "This is not a proper case in which to examine a State's laws under strict judicial scrutiny." The reasons as stated by the Court were, "The Texas system does not disadvantage any suspect class", "Texas school-financing system does not impermissibly interfere with the exercise of a "fundamental" right or liberty" and this case "involves the most delicate and difficult questions of local taxation, fiscal planning, educational policy and federalism, considerations counseling a more restrained form of review." "The Texas system does not violate the Equal Protection Clause of the Fourteenth Amendment". (San Antonio Independent School District v. Rodriquez 1973).

State Courts

The major effect of the Rodriquez case was to move the issue of equity of school funding to the state court systems. Eighteen of thirty-six cases state courts have held the state funding formulas to be unconstitutional. (Linn, 1998) The state which has the most extensive court battles over state funding formulas is the state of Texas. The Texas Constitution mandates " A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, it shall be the duty of the Legislature

of the State to establish and make suitable provision for the support and maintenance of an efficient system of public schools." (Texas Constitution 1876)

In May of 1984, several school districts filed suit against the state on grounds the public school finance system violated the Texas Constitution. The system was declared unconstitutional in district court but was overturned on an appeal. This appeal was appealed to the Texas Supreme Court. The Texas Supreme Court overturned this judgement "holding that the school finance system was not "efficient" as required by article VII, section 1 of the Texas Constitution." The school finance system was "neither financially efficient nor effective in the sense of providing for a "general diffusion of knowledge" statewide." (Edgewood I).

In 1990 the state legislature attempted to correct the problem by passing Senate Bill 1 in June 1990. The districts again challenged the constitutionality of this finance system. The district court ruled the school finance system was still unconstitutional. On a direct appeal to the Texas Supreme Court the court held the system was still inefficient, with a "overall failure to restructure the system". (Edgewood II).

The Legislature then passed Senate Bill 351 which created 188 County Education Districts or CED's to perform taxing functions. This method was challenged in court and again declared unconstitutional. The court ruled this bill violated article VII, section 1-e of the Texas Constitution and it did so without an election as required by article VII, section 3 of the state constitution. (Edgewood III). An attempt was made to pass an amendment to the state constitution, which would authorize the CED's to levy, collect and distribute ad valorem taxes. The voters of Texas did not pass this amendment.

The Legislature then passed Senate Bill 7 in 1995. This bill created a two-tier education finance structure known as the Foundation School Program. Tier I funds provide enough funding to all districts in the state, so they can provide a basic program which meets accreditation requirements. It also imposed a cap on district's taxable property at $280,000 per student. This bill placed the minimum tax rate at $0.86 and the maximum at $1.50 per hundred dollars of property value.

Tier II funding has a guaranteed yield system so districts may supplement the basic program. In the Tier II portion, every cent above $0.86 tax rate not exceeding $1.50 tax rate the state guarantees a yield of $20.55 (currently $24.99). These tax rates are based on the assessed property value. The district has five choices to lower the taxable property tax level below the $280,000. Most districts elect to give the excess money to the state redistributed to other poorer districts (Edgewood v. Meno 1995).

The educational system of any state must provide a process, which meets the needs of a diverse student population. It has taken many years and much litigation for the states to provide an equitable system of funding. Why is it important for financing of schools to be based on equity? If you view equity as meaning fairness, we are leveling the playing field in one aspect. Did these cases mentioned provide equity to the students in Texas? Are these cases enough to ensure fairness for the children in our educational system?

To truly provide an equitable system of education, three areas must be made as equitable as possible. The first is the area of funding. To teach all the children of this state so they will meet a basic academic standard requires a funding system, which has equity. This type of system will provide funding to districts based on their needs.

Although many do not enjoy the courts examining our educational system, we never would achieve equity in funding in our schools, except through the courts. Without the courts, many of the injustices would still be present.

Secondly, we as a community of educators need to align the curriculum (Texas Essential Knowledge Skills or TEKS) with the assessment instrument. We have to test what we teach or teach what we test. With the alignment of the TEKS (the state curriculum) with the Texas Assessment of Academic Skills (TAAS) the state assessment instrument. Texas did this in 1998 when the TAAS test was rewritten to correlate with the TEKS. The state legislature continues to improve the use of this test, adding subjects and grade levels to be tested. This allows a fair comparison of districts across the entire state, with everyone teaching the same curriculum which is assessed using the same assessment.

The third area is the most difficult to achieve. Every teacher must continually commit himself or herself to provide each child an equitable education. Giving children what they need to learn and anticipating these needs changing. Until the education community can achieve this goal, true equity will not be achieved. The courts, the state has pushed equity along, now it is the educators turn. Are you up to the challenge?

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